

CIVIL, CLOSED

**U.S. District Court
Eastern District of California - Live System (Sacramento)
CIVIL DOCKET FOR CASE #: 2:07-cv-02100-FCD-JFM**

Litschke v. PepsiCo Inc., et al
Assigned to: Judge Frank C. Damrell, Jr
Referred to: Magistrate Judge John F. Moulds
Cause: 28:1332 Diversity-Property Damage

Date Filed: 10/05/2007
Date Terminated: 03/25/2008
Jury Demand: Plaintiff
Nature of Suit: 380 Personal Property:
Other
Jurisdiction: Diversity

Plaintiff

Amanda Litschke

represented by **C Brooks Cutter**
Kershaw Cutter and Ratinoff LLP
401 Watt Avenue
Sacramento, CA 95864
(916) 448-9800 x401
Fax: (916) 669-4499
Email: bcutter@kcrlegal.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

PepsiCo, Inc.

represented by **Joshua Judah Pollack**
Proskauer Rose LLP
2049 Century Park East
Ste 3200
Los Angeles, CA 90067-3206
(310) 284-5677
Fax: (310) 557-2193
Email: jpollack@proskauer.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

The Pepsi Bottling Group, Inc.

Defendant

Pepsi Bottling Ventures, LLC

represented by **Donald H. Tucker, Jr.**
Smith, Anderson, Blount, Dorsett,
Mitchell & Jernigan, LLP
2500 Wachovia Capitol Center

P.O.Box 2611
 Raleigh, NC 27606-2611
 (919) 821-6681
 Fax: (919) 821-6800
 Email: dtucker@smithlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/05/2007	<u>1</u>	CIVIL COVER SHEET by Amanda Litschke (Cutter, C) (Entered: 10/05/2007)
10/05/2007	<u>2</u>	COMPLAINT <i>[Class Action]</i> against PepsiCo, Inc., The Pepsi Bottling Group, Inc., Pepsi Bottling Ventures, LLC by Amanda Litschke. Attorney Cutter, C Brooks added. (Cutter, C) (Entered: 10/05/2007)
10/05/2007		RECEIPT number #CAE200001646 of \$350.00 fbo Amanda Litschke by C. Brooks Cutter on 10/5/2007. (Marciel, M) (Entered: 10/05/2007)
10/05/2007	<u>4</u>	SUMMONS ISSUED as to *PepsiCo, Inc., The Pepsi Bottling Group, Inc., Pepsi Bottling Ventures, LLC* with answer to complaint due within *20* days. Attorney *C. Brooks Cutter* *Kershaw, Cutter & Ratnoff, LLP* *980 - 9th Street, 19th Floor* *Sacramento, CA 95814*. (Marciel, M) (Entered: 10/05/2007)
10/05/2007	<u>5</u>	CIVIL NEW CASE DOCUMENTS ISSUED (Attachments: # <u>1</u> Consent Forms # <u>2</u> VDRP Forms) (Marciel, M) (Entered: 10/05/2007)
11/05/2007	<u>6</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by PepsiCo, Inc. for attorney Donald H. Tucker, Jr. to appear Pro Hac Vice. Attorney Pollack, Joshua Judah added. (Pollack, Joshua) (Entered: 11/05/2007)
11/06/2007		RECEIPT number #CAE200002455 \$180.00 fbo Donald H. Tucker, Jr by Joshua J. Pollack on 11/6/2007. (Duong, D) (Entered: 11/06/2007)
11/06/2007	<u>8</u>	PRO HAC VICE ORDER signed by Judge Frank C. Damrell Jr. on 11/5/07. Application for Attorney Donald H. Tucker, Jr for Pepsi Bottling Ventures, LLC APPROVED.(Mena-Sanchez, L) (Entered: 11/06/2007)
11/06/2007	<u>9</u>	STIPULATION and PROPOSED ORDER Staying Case Pending Decision by Judicial Panel on Multidistrict Litigation by PepsiCo, Inc.. (Attachments: # <u>1</u> Signatures)(Pollack, Joshua) (Entered: 11/06/2007)
11/07/2007	<u>10</u>	STIPULATION and ORDER signed by Judge Frank C. Damrell Jr. on 11/06/07 ORDERING that pursuant to <u>9</u> Stipulation, that all proceedings in this matter are STAYED pending a determination by the JPML on dfts' Motion to consolidate and transfer filed 10/20/07 with the JPML. (Benson, A) (Entered: 11/07/2007)
03/25/2008	<u>11</u>	ORDER, CASE TRANSFERRED to the Southern District of New York.

		File, certified copy of transfer order, and docket sheet sent. CASE CLOSED. (Yin, K) (Entered: 03/31/2008)
03/31/2008	<u>12</u>	TRANSMITTAL of DOCUMENTS pursuant to <u>11</u> Order, Case Transferred Out to Another District on *3/25/2008* to * USDC Southern District of New York* *500 Pearl Street* *New York, NY 10007*. ** *Electronic Documents: 1 to 11. *. (Yin, K) (Entered: 03/31/2008)

PACER Service Center			
Transaction Receipt			
04/07/2008 07:54:02			
PACER Login:	us5070	Client Code:	
Description:	Docket Report	Search Criteria:	2:07-cv-02100-FCD-JFM
Billable Pages:	2	Cost:	0.16

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) AMANDA LITSCHKE, on behalf of herself and all others similarly situated		DEFENDANTS PEPSICO, INC., THE PEPSI BOTTLING GROUP, INC., and PEPSI BOTTLING VENTURES, LLC	
(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): El Dorado County, California		County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):	
(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) C. Brooks Cutter, SBN 121407 KERSHAW, CUTTER & RATINOFF 980 9th Street, Suite 1900 Sacramento, CA 94821 916-448-9800		Attorneys (If Known)	

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table border="1" style="width:100%"><tr><td>Citizen of This State</td><td>PTF <input checked="" type="checkbox"/> 1</td><td>DEF <input type="checkbox"/> 1</td><td>Incorporated or Principal Place of Business in this State</td><td>PTF <input type="checkbox"/> 4</td><td>DEF <input type="checkbox"/> 4</td></tr><tr><td>Citizen of Another State</td><td><input type="checkbox"/> 2</td><td><input type="checkbox"/> 2</td><td>Incorporated and Principal Place of Business in Another State</td><td><input type="checkbox"/> 5</td><td><input checked="" type="checkbox"/> 5</td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td><input type="checkbox"/> 3</td><td><input type="checkbox"/> 3</td><td>Foreign Nation</td><td><input type="checkbox"/> 6</td><td><input type="checkbox"/> 6</td></tr></table>				Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																		

IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge							
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V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)	
CLASS ACTION under F.R.C.P. 23: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No MONEY DEMANDED IN COMPLAINT: \$ Exceeds \$75,000	

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 28U.S.C. §§1332(d)(2), 1391, 2201, 2202. Breach of consumer protection and unfair competition statutes in sale of misrepresented water.					
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VII. NATURE OF SUIT (Place an X in one box only.) <table border="1" style="width:100%"><tr><td>OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities /Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. 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VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number: _____

1 C. Brooks Cutter, SBN 121407
2 KERSHAW, CUTTER & RATINOFF, LLP
3 980 9th Street, 19th Floor
4 Sacramento, CA 95814
5 Telephone: (916) 448-9800
6 Facsimile: (916) 669-4499

7 Nicholas J. Drakulich, SBN 098135
8 Jennings & Drakulich, LLP
9 2002 Jimmy Durante Blvd., Suite 400
10 Del Mar, CA 92014
11 Telephone: (858) 755-5887
12 Facsimile: (858) 755-6456

13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA
16

17 AMANDA LITSCHKE, on behalf of
18 herself and all others similarly situated,

19 Plaintiffs,

20 vs.

21 PEPSICO, INC., THE PEPSI BOTTLING
22 GROUP, INC., and PEPSI BOTTLING
23 VENTURES, LLC,

24 Defendants.

Case No.

**CLASS ACTION COMPLAINT AND
JURY DEMAND FOR TRIAL**

25 Plaintiff AMANDA LITSCHKE, by and through her undersigned counsel, for herself and
26 all others similarly situated, hereby brings this Class action Complaint against Defendants
27 PEPSICO INC., THE PEPSI BOTTLING GROUP, INC. AND PEPSI BOTTLING VENTURES
28 LLC ("Defendants"). Plaintiff makes the following allegations based upon her personal

1 knowledge as to her own acts, and upon information and belief as well as upon her attorneys'
2 investigative efforts as to Defendants' actions and misconduct as alleged herein:

3 **Nature of The Action**

4 1. In this class action lawsuit, Plaintiff seeks to obtain damages and/or compensatory
5 restitution for Defendants' wrongful and illegal sales and marketing of *Aquafina* bottled water
6 (*"Aquafina"*), in that Defendants advertising, marketing and/or labeling of *Aquafina* failed to
7 inform consumers that the source of the water was public tap water, not water from an inherently
8 cleaner source, such as a mountain as implied in the logo on the *Aquafina* label. Whether through
9 intentional, reckless, or negligent action, Defendants marketed and sold *Aquafina* notwithstanding
10 the fact that its content was undisclosed, mislabeled and misleading. As a result, consumers like
11 Plaintiff herein purchased *Aquafina* not knowing the water's true source and accordingly have
12 suffered harm as set forth below plaintiff alleges (a) violations of Uniform Deceptive Acts and
13 Practices statutes (sometimes also referred to as "Consumer Protection Statutes"); (b) breach of
14 the implied warranty of merchantability; and (c) unjust enrichment.

15 2. Plaintiff further seeks declaratory and injunctive relief to prevent a reoccurrence of
16 such wrongful activity by Defendants.

17 **Parties**

18 3. Plaintiff Amanda Litschke resides in Cameron Park, California and is a citizen of
19 the State of California.

20 4. Defendant PepsiCo, Inc. ("Pepsi") is a corporation organized under the laws of the
21 State of North Carolina and has its principal place of business in Purchase, New York.

22 5. Defendant The Pepsi Bottling Group, Inc. ("PBG") is a corporation organized
23 under the laws of the State of Delaware and has its principal place of business in Somers, New
24 York.
25
26
27
28

1 6. Defendant Pepsi Bottling Ventures LLC ("PBV") is a corporation organized under
2 the laws of the State of Delaware and has its principal place of business in Raleigh, North
3 Carolina.

4 7. PBG and PBV (hereinafter collectively "Pepsi Bottlers") are bottling companies
5 affiliated with Pepsi, are two of Pepsi's "anchor bottlers" of *Aquafina* and other Pepsi products,
6 and are primarily responsible for manufacturing, selling and distributing *Aquafina* in California
7 and throughout the United States.

8 8. With respect to the conduct alleged herein, the acts and alleged wrongdoing of
9 Defendants Pepsi and the Pepsi Bottlers may be imputed to each other inasmuch as they acted as
10 the agents, alter-egos or co-conspirators of each other.

11
12 **Jurisdiction and Venue**

13 9. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §
14 1332(d)(2) inasmuch as the Defendants are citizens of the States of New York, North Carolina
15 and Delaware and the members of the Class alleged herein include persons who are citizens of
16 States other than New York, North Carolina and Delaware; the action is a putative class action
17 pursuant to Federal Rule of Civil Procedure 23, and the amount in controversy exceeds the sum of
18 \$5 million, exclusive of interests and costs.

19 10. Venue is proper in this district pursuant to 28 U.S.C. §1391.

20 11. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§
21 2201 and 2202.

22 **Factual Allegations of the Plaintiff**

23 12. On many occasions and for at least two to three years, Amanda Litschke purchased
24 *Aquafina* at stores and gas stations in her neighborhood.

1 19. Plaintiff's claims involve questions of law and fact common to the Class, because
2 Plaintiff and other members of the Class were similarly affected by Defendants' unlawful and
3 wrongful conduct that is complained of herein.

4 20. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has
5 retained counsel competent and experienced in class and consumer litigation and, in particular,
6 this area of law, and Plaintiff has no conflict of interest with other Class members in the
7 maintenance of this class action. Plaintiff has no relationship with Defendants except as
8 customers. Plaintiff will vigorously pursue the claims of the Class.

9 21. Common questions of law and fact exist as to all members of the Class and
10 predominate over any questions solely affecting individual members of the Class. Among the
11 questions of law and fact common to the Class are:
12

13 a. Whether the water marketed and sold as *Aquafina* was bottled from
14 sources of what is generally known as "tap water";
15

16 b. Whether Defendants withheld information from and/or omitted to inform
17 consumers on *Aquafina* labels that the water marketed and sold as *Aquafina* was bottled
18 from sources of what is generally known as "tap water";

19 c. Whether Defendants' withholding of information and/or failure to inform
20 consumers as to the true source of the water marketed and sold as *Aquafina* resulted from
21 negligent, reckless or intentional behavior;
22

23 d. Whether Defendants' affirmatively promoted the water marketed and sold
24 as *Aquafina* as being better fit for human consumption because of the "perfect" or more
25 "pure" nature of the water's source;
26
27
28

1 e. Whether Defendants' conduct respecting *Aquafina* violated New York
2 GBL § 349, and the state consumer protection and/or uniform deceptive acts and practices
3 statutes in effect in the various States;

4 f. Whether Defendants' conduct breached the implied warranty of
5 merchantability; and
6

7 g. Whether Defendants' omissions in the labeling of *Aquafina* so as to
8 conceal the true nature of the source of the water marketed and sold under
9 the brand name *Aquafina* caused Defendants to be unjustly enriched when
10 the totality of the circumstances are considered.

11 22. A class action is an appropriate and superior method for the fair and efficient
12 adjudication of the controversy given the following factors:
13

14 a. Common questions of law and/or fact predominate over any individual
15 questions that may arise, and, accordingly, there would accrue economies to both the
16 courts and the Class in litigating the common issues on a class wide basis instead of on a
17 repetitive individual basis;

18 b. Class members' individual damage claims are too small to make individual
19 litigation an economically viable alternative;
20

21 c. Despite the relatively small size of individual Class members' claims, their
22 aggregate volume, coupled with the economies of scale inherent in litigating similar
23 claims on a common basis, will enable this case to be litigated as a class action on a
24 cost-effective basis, especially when compared with repetitive individual litigation; and

25 d. No unusual difficulties are likely to be encountered in the management of
26 this class action in that all questions of law and/or fact to be litigated at the liability stage
27 are common to the Class.
28

1 31. Defendants' "blue mountain labels" on *Aquafina* contain a logo of a sun rising or
2 setting over a mountain range and contains the slogan "Pure Water Perfect Taste".

3 32. Defendants' blue mountain labels, therefore, implying that the origin of the water
4 in *Aquafina* bottles is from a mountain source and/or a source more pure than either tap water or
5 rivals' water.
6

7 33. Defendants' website fails to inform consumers that the true nature of the source of
8 the water marketed and sold as *Aquafina* is tap water.

9 34. Defendants negligently, recklessly and/or intentionally misled consumers into
10 believing that *Aquafina* was similar to, as good as and/or better than other rivals' water based
11 upon, in part, the source of the water used in *Aquafina*.
12

13 35. Defendants failed to disclose tap water as the true source of *Aquafina* to consumers
14 because Defendants knew that such information would be considered important to consumers
15 when they made decisions of whether to purchase Defendants' *Aquafina* water, and that
16 consumers would pay less for *Aquafina* and buy less *Aquafina* if they knew it was tap water.

17 36. Defendants failed to disclose tap water as the true source of *Aquafina* to consumers
18 because Defendants knew that such disclosure would be detrimental to the sales of Defendants'
19 *Aquafina* water.
20

21 37. On or about July 27, 2007, Defendants agreed to relabel *Aquafina* in order to
22 include information that the source of the water was tap water.

23 38. On or about July 27, 2007, Defendant Pepsi admitted that the prior labeling of
24 *Aquafina* was misleading to reasonable consumers when Pepsi, referring to the re-labeling of
25 *Aquafina*, released a statement saying: "If this helps clarify the fact that the water originates from
26 public sources, then it's a reasonable thing to do."
27
28

FIRST CAUSE OF ACTION

**FOR UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER STATE LAW
(By Plaintiff on her own behalf and on behalf of the Class)**

39. Plaintiff hereby incorporates by reference paragraphs 1-38 as if fully set forth herein.

40. Defendants had a statutory duty to refrain from unfair or deceptive acts or practices in the bottling, manufacturing, marketing, labeling and sale of *Aquafina*.

41. Had Defendants not engaged in the wrongful and deceptive conduct described above, Plaintiff and members of the Class would not have purchased and/or paid the same amount for *Aquafina*, and they have therefore proximately suffered injury in fact and ascertainable losses.

42. Defendants' deceptive, unconscionable or fraudulent representations and material omissions to consumers, including the failure to inform consumers of the true source of the water used in *Aquafina* and the mislabeling of the same, constituted unfair and deceptive acts and practices in violation of state consumer protection statutes.

43. Defendants engaged in their wrongful conduct while at the same time obtaining sums of money from Plaintiff and Class members for *Aquafina*.

44. Defendants' actions, as complained of herein, constitute unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of state consumer protection statutes, including, but not limited to Cal. Business and Professions Code §17200, California Legal Remedies Act Civil Code §1750, *et seq.*, as well as substantially similar statutes in effect in the other States.

45. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the Class are entitled to a judgment declaring that Defendants' actions have been in violation of their statutory duties, that provides injunctive relief in order to ensure continued wrongful and similar acts do not occur hereafter, and that provides compensatory damages, treble damages, attorneys' fees, and/or costs of suit.

THIRD CAUSE OF ACTION

**FOR UNJUST ENRICHMENT
(By Plaintiff on him own behalf and on behalf of the Class)**

Plaintiff hereby incorporates by reference paragraphs 1-50 as if fully set forth herein.

51. Defendants obtained monies from the manufacture, labeling, distribution, marketing and/or sale of *Aquafina*, water that was, as they knew or reasonably should have known was mislabeled because the label omitted that the source of the water was tap water and contained images and/or words that implied that the source of the water was more pure and/or better than tap water and/or the bottled water of Defendants' rivals. When considered under the totality of the circumstances regarding Defendants' knowledge regarding *Aquafina*, Defendants have been unjustly enriched to the detriment of Plaintiff and the other members of the Class, as alleged above, by retention of consumer's purchase monies received directly or indirectly. These unjust benefits were conferred on Defendants by consumers as a direct result of the omissions and mislabeling made by Defendants.

52. Defendants' retention of some or all of the monies they have gained through their wrongful acts and practices would be unjust considering the circumstances of their obtaining those monies.

53. Defendants should be required to disgorge their unjustly obtained monies and to make restitution to Plaintiff and the other members of the Class, in an amount to be determined, of the monies by which they have been unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of herself and all others similarly situated, prays for judgment against Defendants as follows:

1. For an Order certifying the Class and any appropriate subclasses thereof under the appropriate provisions of Federal Rule of Civil Procedure 23, and appointing Plaintiff and her counsel to represent such Classes and subclasses as appropriate under Rule 23(g);
2. For the declaratory and equitable relief requested;

3. For compensatory, equitable and/or restitutionary damages according to proof and for all applicable statutory damages under California Business & Professions Code §17200 *et seq.*, Consumer Legal Remedies Act, Civil Code § 1750 *et seq.*, and under the consumer protection legislation of the other states and the District of Columbia;

4. For an award of attorneys' fees and costs;

5. For prejudgment interest and the costs of suit;

6. For such other and further relief as this Court may deem just and proper.

Dated: October 4, 2007

KERSHAW, CUTTER & RATINOFF, LLP

By: 

C. Brooks Cutter, SBN 121407
KERSHAW, CUTTER & RATINOFF, LLP
980 9th Street, Suite 1900
Sacramento, CA 95814
Telephone: 916-448-9800
Attorneys for Plaintiffs

JENNINGS & DRAKULICH, LLP

By: 

Nicholas J. Drakulich, SBN 098135
JENNINGS & DRAKULICH, LLP
2002 Jimmy Durante Blvd., Suite 400
Del Mar, CA 92014
Telephone: (858) 755-5887

///

///

///

///

///

///

///

JURY DEMAND

Plaintiffs demand a trial by jury on all issues triable as of right by a jury.

Dated: October 4, 2007

KERSHAW, CUTTER & RATINOFF, LLP

By: 

C. Brooks Cutter, SBN 121407

KERSHAW, CUTTER & RATINOFF, LLP

980 9th Street, Suite 1900

Sacramento, CA 95814

Telephone: 916-448-9800

Attorneys for Plaintiffs

JENNINGS & DRAKULICH, LLP

By: 

Nicholas J. Drakulich, SBN 098135

JENNINGS & DRAKULICH, LLP

2002 Jimmy Durante Blvd., Suite 400

Del Mar, CA 92014

Telephone: (858) 755-5887

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AMANDA LITSCHKE,

V.

SUMMONS IN A CIVIL CASE

PEPSICO, INC., ET AL.,

CASE NUMBER: 2:07-CV-02100-FCD-JFM

**TO: PepsiCo, Inc., The Pepsi Bottling Group,
Inc., Pepsi Bottling Ventures, LLC**
Defendant's Address:

YOU ARE HEREBY SUMMONED and required to serve on

**C. Brooks Cutter
Kershaw, Cutter & Ratinoff, LLP
980 – 9th Street, 19th Floor
Sacramento, CA 95814**

an answer to the complaint which is served on you with this summons, within **20** days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

VICTORIA C. MINOR

CLERK

/s/ M. Marciel



(By) DEPUTY CLERK

ISSUED ON 2007-10-05 16:09:15.0, Clerk
USDC EDCA

RETURN OF SERVICEService of the Summons and complaint was made by me⁽¹⁾

DATE

NAME OF SERVER (*PRINT*)

TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____

- ☐ Left copies thereof at the defendant's dwelling house or usual place of bode with a person of suitable age and discretion then residing therein.
- ☐ Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____

- ☐ Other (specify) : _____

STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on

Date

Signature of Server

Address of Server

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AMANDA LITSCHKE,

Plaintiffs,

NO. 2:07-CV-02100-FCD-JFM

v.

PEPSICO, INC., ET AL.,

ORDER REQUIRING JOINT
STATUS REPORT

Defendants.

This action has been assigned to the Honorable Frank C. Damrell, Jr. Pursuant to the provisions of Rule 16 of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED THAT:

1. Plaintiff(s) shall complete service of process on all parties within one hundred and twenty (120) days of the date of the filing of the complaint;
2. Concurrently with the service of process, or as soon thereafter as possible, plaintiff(s) shall serve upon each of the parties named in the complaint, and upon all parties subsequently joined, a copy of this order, and shall file with the Clerk of the Court a certificate reflecting such service. Any party who impleads a third-party defendant shall serve upon that party a copy of this order, and shall file with the Clerk of the Court a certificate reflecting such service;
3. In the event this action was originally filed in a state court and was thereafter removed to this court, the removing party or parties shall, immediately following such removal, serve upon each of the other parties named in the complaint, and upon all parties subsequently joined, a copy of this order and shall file with the Clerk of the Court a certificate reflecting such service;
4. Within sixty (60) days of service of the complaint **on all parties**, or from the date of removal, the parties shall confer as required by Fed. R. Civ. P. 26(f) and shall prepare and submit to the court a **joint status report** that includes the Rule 26(f) discovery plan. **The parties are instructed to submit a Joint Status Report with all named parties participating in its completion. If this cannot be accomplished plaintiff's counsel shall contact the undersigned for further instructions prior to the submission of any report.** The status report shall address the following matters:

- (a) a brief summary of the claims and legal theories under which recovery is sought or liability is denied;
- (b) status of service upon all defendants and cross-defendants;

- (c) possible joinder of additional parties;
- (d) contemplated amendments to the pleadings;
- (e) the statutory basis for jurisdiction and venue;
- (f) anticipated discovery and the scheduling of discovery, including:
 - (1) what changes, if any, should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under Rule 26(a)(1) were made or will be made;
 - (2) the subjects on which discovery may be needed; when discovery should be completed, and whether discovery should be conducted in phases;
 - (3) what changes, if any, should be made in the limitations on discovery imposed under the Civil Rules and what other limitations, if any, should be imposed;
 - (4) the timing of the disclosure of expert witnesses and information required by Rule 26(a)(2); and
 - (5) proposed dates for discovery cut-off;
- (g) contemplated dispositive motions and proposed date by which all non-discovery motions shall be heard;
- (h) proposed date for final pretrial conference;
- (i) proposed date for trial, estimate of days of trial, and whether any party has demanded a jury;
- (j) appropriateness of special procedures such as reference to a special master or agreement to try the matter before a magistrate judge pursuant to 28 U.S.C. 636(c);
- (k) proposed modification of standard pretrial procedures because of the simplicity or complexity of the case;
- (l) whether the case is related to any other case pending in this district, including the bankruptcy courts of this district;

(m) prospects for settlement, including whether a settlement conference should be scheduled and whether, in the case of a jury trial, the parties will stipulate to the trial judge acting as settlement judge; and

(n) any other matters that may be conducive to the just and expeditious disposition of the case.

5. The Court, upon review of the joint status report may:

(a) by minute order, set a status conference to be held either by telephone or in person; or

(b) issue a scheduling order incorporating the suggestions of counsel as contained in the joint status report.

6. In the rare event the parties are not able to file a joint status report, each party must file an individual status report and attach a declaration setting forth, in detail, the circumstances that prevented the parties from filing a joint status report.

7. If a status conference is held, a formal order will be issued regarding future proceedings in the case. Counsel are directed to read the order carefully. Request to modify or vacate any date set forth in the order are not favored and will not be granted absent good cause.

8. All purely legal issues are to be resolved by timely pretrial motions. Motions shall be filed in accordance with L.R. 78–230(b). **The court places a page limit of twenty (20) pages on all initial moving papers. Opposition papers shall be filed in accordance with L.R. 78–230(c) and the court places a page limit of twenty (20) pages on oppositions, and a page limit of ten (10) pages for replies. All requests for page limit increases must be made through the courtroom deputy clerk at least fourteen (14) days prior to the filing of the motion.** Any party that does not oppose the granting of the motion shall file a statement of non–opposition in accordance with L.R. 78–230(c). **The failure to file an opposition or statement of non–opposition in accordance with L.R. 78–230(c) may be deemed consent to the granting of the motion and the court may dispose of the motion summarily.** Brydes v. Lewis, 18 F.3d 651, 652–53 (9th Cir. 1994).

9. Counsel are reminded of their continuing duty pursuant to L.R. 16–160 to immediately notify the courtroom deputy and chambers of any settlement or other disposition of the case.

Dated: October 5, 2007

/s/ M. Price

Maureen A. Price
Courtroom Deputy
(916) 930–4163 fax (916) 491–3932
email: mprice@caed.uscourts.gov
Proposed orders to: fcdorders@caed.uscourts.gov

**NOTICE OF AVAILABILITY OF A MAGISTRATE JUDGE
TO EXERCISE JURISDICTION AND APPEAL INSTRUCTIONS**

You are hereby notified in accordance with 28 U.S.C §636(c), F.R.Civ.P.73 and Local Rule 73–305, the United States Magistrate Judges sitting in Sacramento and Fresno are available to exercise the court's case dispositive jurisdiction and to conduct any or all case despositive proceedings in this action, including motions to dismiss, motions for summary judgment, a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a Magistrate Judge is however, permitted only if all parties voluntarily consent. You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's case dispositive jurisdiction from being exercised by a Magistrate Judge.

Any appeal from a judgment entered by a Magistrate Judge is taken directly to the United States Court of Appeals for the Ninth Circuit or, where appropriate, for the Federal Circuit in the same manner as an appeal from any other judgment of a District Court.

Whether or not the parties consent to pursuant to 28 U.S.C. § 636(c) the assigned Magistrate Judge will hear all motions except those case dispositive motions set forth in 28 U.S.C. § 636(b)(1)(A).

A copy of the Form for "Consent to / Decline of Jurisdiction of United States Magistrate Judge" is attached hereto for pro per use and attorney information. This form is available in fillable .pdf format on the court's web site at www.caed.uscourts.gov for all attorney ECF filers. This form may be filed through CM/ECF or by pro se litigants at the appropriate Clerk's Office location.

Office of the Clerk
501 I Street, Room 4–200
Sacramento, CA 95814

Office of the Clerk
2500 Tulare Street , Suite 1501
Fresno, CA 93721

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AMANDA LITSCHKE,
Plaintiff(s)/Petitioner(s),

vs.

CASE NO. 2:07-CV-02100-FCD-JFM

PEPSICO, INC., ET AL.,
Defendant(s)/Respondents(s).

IMPORTANT

**IF YOU CHOOSE TO CONSENT OR DECLINE TO CONSENT TO JURISDICTION OF
A UNITED STATES MAGISTRATE JUDGE, CHECK AND SIGN THE APPROPRIATE
SECTION OF THIS FORM AND RETURN IT TO THE CLERK'S OFFICE.**

☐ **CONSENT TO JURISDICTION OF
UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of Title 28, U.S.C Sec. 636(c)(1), the undersigned hereby voluntarily consents to have a United States Magistrate Judge conduct all further proceedings in this case, including trial and entry of final judgment, with direct review by the Ninth Circuit Court of Appeals, in the event an appeal is filed.

Date: _____ Signature: _____

Print Name: _____
() Plaintiff/Petitioner () Defendant/Respondent
() Counsel for * _____

☐ **DECLINE OF JURISDICTION OF
UNITED STATES MAGISTRATE JUDGE**

Pursuant to Title 28, U.S.C. Sec 636(c)(2), the undersigned acknowledges the availability of a United States Magistrate Judge but hereby declines to consent.

Date: _____ Signature: _____

Print Name: _____
() Plaintiff/Petitioner () Defendant/Respondent
() Counsel for * _____

**If representing more than one party, counsel must indicate name of each party responding.*

NOTICE OF AVAILABILITY

VOLUNTARY DISPUTE RESOLUTION

Pursuant to the findings and directives of Congress in 28 U.S.C. §§ 651 *et seq.*, and in recognition of the economic burdens and delay in the resolution of disputes that can be imposed by full formal litigation, Local Rule 16–271 governs the referral of certain actions to the Voluntary Dispute Resolution Program ("VDRP") at the election of parties. Plaintiff or removing party is to provide all other parties with copies of the notice at the time service is effected or, for parties already served, no more than fourteen (14) days after receiving notice from the Court. After filing of the original complaint or removal action, any party who causes a new party to be joined in the action shall promptly serve a copy of the notice on the new party.

It is the Court's intention that the VDRP shall allow the participants to take advantage of a wide variety of alternative dispute resolution methods. These methods may include, but are not limited to, mediation, negotiation, early neutral evaluation and settlement facilitation. The specific method or methods employed will be determined by the Neutral and the parties.

PLEASE TAKE NOTICE that pursuant to Local Rule 16–271, *this Local Rule applies to* all civil actions pending before any District Judge or Magistrate Judge in the District except that actions in the following categories are exempt from presumptive inclusion: (i) prisoner petitions and actions, including habeas corpus petitions, (ii) actions in which one of the parties is appearing *pro se*, (iii) voting rights actions, (iv) social security actions, (v) deportation actions, (vi) Freedom of Information Act actions, and (vii) actions involving the constitutionality of federal, state or local statutes or ordinances. The fact that a case falls in a category that is exempt from the presumptive applicability of this Local Rule neither (1) precludes the parties to such a case from agreeing to participate in an Alternative Dispute Resolution ("ADR") process, nor (2) deprives the Court of authority to compel participation in an appropriate ADR proceeding.

Parties may elect Voluntary Dispute Resolution with the Court indicating that all parties to the action agree to submit the action to VDRP pursuant to Local Rule 16–271. Actions may not be assigned to VDRP over the objection of a party. (Copy of sample stipulation attached hereto.) **At the time of filing, a copy of the stipulation shall be provided to the VDRP Administrator designated below:**

Sacramento Cases

Voluntary Dispute Resolution
Program Administrator
United States District Court
501 "I" Street , Suite 4–200
Sacramento, CA 95814
(916) 930–4280

Fresno Cases

Voluntary Dispute Resolution
Program Administrator
United States District Court
2500 Tulare Street , Suite 1501
Fresno, CA 93721
(559) 499–5600

Attorney Identification
(include State Bar number)

Attorney(s) for:

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

AMANDA LITSCHKE,
Plaintiff(s)

NO. 2:07-CV-02100-ECD-JFM

v.

PEPSICO, INC., ET AL.,
Defendant(s)

STIPULATION TO ELECT
REFERRAL OF ACTION TO VOLUNTARY
DISPUTE RESOLUTION PROGRAM (VDRP)
PURSUANT TO LOCAL RULE 16-271

Pursuant to Local Rule 16-271, the parties hereby agree to submit the above-entitled action to
the Voluntary Dispute Resolution Program.

DATED: _____

Name:
Attorney(s) for Plaintiff(s)

Name:
Attorney(s) for Defendant(s)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA



PRO HAC VICE APPLICATION,
ECF REGISTRATION AND CONSENT
TO ELECTRONIC SERVICE,
PROPOSED ORDER

Litschke v. PepsiCo, Inc.

Plaintiff(s),

Case No. 2:07-cv-02100-FC-JFM

v.

The Pepsi Bottling Group, Inc., et al.

Defendant(s).

I, Donald H. Tucker, Jr.,

attorney for Pepsi Bottling Ventures LLC,

hereby petition for admission to practice Pro Hac Vice under the provision of Local Rule 83-180(b)(2). I understand and consent to ECF Registration and Electronic Service as detailed below and I have submitted payment in the amount of \$180.00 to the Clerk, U.S. District Court. In support of this petition, I state under penalty of perjury that:

My business address is:

Firm Name: Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP
Address: 2500 Wachovia Capitol Center
P.O. Box 2611
City: Raleigh
State: NC ZIP Code: 27602-2611
Voice Phone: (919) 821-6681
FAX Phone: (919) 821-6800
Internet E-mail: dtucker@smithlaw.com
Additional E-mail: _____
I reside in City: Raleigh State: NC

I was admitted to practice in the State Bar of North Carolina (court)
on August 18, 1984 (date). I am presently in good standing and
eligible to practice in said court. I am not currently suspended or disbarred in any other court.

I have ☐/ have not ☒ concurrently or within the year preceding this application made a pro hac vice application to this court. (If you have made a pro hac vice application to this court within the last year, list the name and case number of each matter in which an application was made, the date of application and whether granted or denied.)

I hereby designate the following member of the Bar of this Court who is registered for ECF with whom the Court and opposing counsel may readily communicate regarding the conduct of the case and upon whom electronic notice shall also be served via the court's ECF system:

Name: Joshua J. Pollack

Firm Name: Proskauer Rose LLP

Address: 2049 Century Park East
Suite 3200

City: Los Angeles

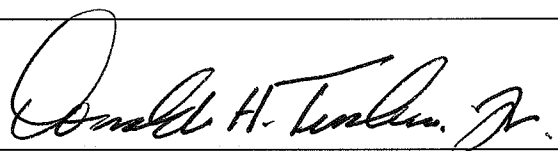
State: CA ZIP Code: 90067-3206

Voice Phone: (310) 284-5677

FAX Phone: (310) 557-2193

E-mail: jpollack@proskauer.com

Dated: November 5, 2007

Petitioner: 

ORDER

IT IS SO ORDERED.

Dated: _____

JUDGE, U.S. DISTRICT COURT

Save As

Print

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA



PRO HAC VICE APPLICATION,
ECF REGISTRATION AND CONSENT
TO ELECTRONIC SERVICE,
PROPOSED ORDER

Litschke v. PepsiCo, Inc.

Plaintiff(s),

Case No. 2:07-cv-02100-FC-JFM

v.

The Pepsi Bottling Group, Inc., et al.

Defendant(s).

I, Donald H. Tucker, Jr.,
attorney for Pepsi Bottling Ventures LLC,

hereby petition for admission to practice Pro Hac Vice under the provision of Local Rule
83-180(b)(2). I understand and consent to ECF Registration and Electronic Service as detailed
below and I have submitted payment in the amount of \$180.00 to the Clerk, U.S. District Court.

In support of this petition, I state under penalty of perjury that:

My business address is:

Firm Name: Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP

Address: 2500 Wachovia Capitol Center
P.O. Box 2611

City: Raleigh

State: NC ZIP Code: 27606-2611

Voice Phone: (919) 821-6681

FAX Phone: (919) 821-6800

Internet E-mail: dtucker@smithlaw.com

Additional E-mail: _____

I reside in City: Raleigh State: NC

I was admitted to practice in the State Bar of North Carolina (court)
on August 18, 1984 (date). I am presently in good standing and
eligible to practice in said court. I am not currently suspended or disbarred in any other court.

I have ☐ / have not concurrently or within the year preceding this application made a pro hac vice application to this court. (If you have made a pro hac vice application to this court within the last year, list the name and case number of each matter in which an application was made, the date of application and whether granted or denied.)

I hereby designate the following member of the Bar of this Court who is registered for ECF with whom the Court and opposing counsel may readily communicate regarding the conduct of the case and upon whom electronic notice shall also be served via the court's ECF system:

Name: Joshua J. Pollack

Firm Name: Proskauer Rose LLP

Address: 2049 Century Park East
Suite 3200

City: Los Angeles

State: CA ZIP Code: 90067-3206

Voice Phone: (310) 284-5677

FAX Phone: (310) 557-2193

E-mail: jpollack@proskauer.com

Dated: November 5, 2007 Petitioner: /s/ Donald H. Tucker, Jr.

ORDER

IT IS SO ORDERED.

Dated: November 5, 2007



JUDGE, U.S. DISTRICT COURT

JOSHUA J. POLLACK, SBN 215922
PROSKAUER ROSE LLP
2049 Century Park East, 32nd Floor
Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193
E-mail: jpollack@proskauer.com

Attorneys for Defendants
PEPSICO, INC. and THE PEPSI
BOTTLING GROUP, INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AMANDA LITSCHKE, on behalf of
herself and all other similarly situated,

Plaintiff,

vs.

PEPSICO, INC., THE PEPSI BOTTLING
GROUP, INC., and PEPSI BOTTLING
VENTURES LLC,

Defendants.

Case No. 2:07-cv-02100 (FCD/JFM)

**STIPULATION AND
[PROPOSED] ORDER STAYING
CASE PENDING DECISION BY
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

IT IS HEREBY STIPULATED AND AGREED by and between Defendants
Pepsico, Inc., The Pepsi Bottling Group, Inc., and Pepsi Bottling Ventures LLC, and
the Plaintiff Amanda Litschke, on behalf of herself and all others similarly situated,
that all proceedings in this matter are stayed pending a determination by the Judicial
Panel on Multidistrict Litigation ("JPML") on the Motion To Consolidate and

1 Transfer filed October 2, 2007 by defendants PepsiCo, Inc. and The Pepsi Bottling
2 Group, Inc. with the JPML.
3

4
5 DATED: November 6, 2007

JOSHUA J. POLLACK
PROSKAUER ROSE LLP

6
7 By: /s/ Joshua J. Pollack, Esq.

8 Joshua J. Pollack
9 Attorneys for Defendants
10 PEPSICO, INC., and THE PEPSI
BOTTLING GROUP, INC.

11 DATED: November __, 2007

DONALD H. TUCKER, JR.
SMITH, ANDERSON, BLOUNT,
DORSETT, MITCHELL & JERNIGAN,
LLP

12
13
14 By: [See attached signature page]

Donald H. Tucker, Jr.*
15 (*Pro Hac Vice application pending)
16 Attorneys for Defendant
PEPSI BOTTLING VENTURES LLC

17 DATED: November __, 2007

C. BROOKS CUTTER
KERSHAW, CUTTER & RATINOFF,
LLP

18
19
20 NICHOLAS J. DRAKULICH
JENNINGS & DRAKULICH, LLP

21 By: [See attached signature page]

22 C. Brooks Cutter
23 Attorneys for Plaintiffs

24 **ORDER**

25 Good Cause Appearing, IT IS SO ORDERED.
26

27 DATED: _____

28 The Honorable Frank C. Damrell, Jr.,
Judge, United States District Court

1 Transfer filed October 2, 2007 by defendants PepsiCo, Inc. and The Pepsi Bottling
2 Group, Inc. with the JPML.

3
4
5 DATED: November __, 2007

JOSHUA J. POLLACK
PROSKAUER ROSE LLP

6
7 By: _____/s/

8 Joshua J. Pollack
9 Attorneys for Defendants
10 PEPSICO, INC., and THE PEPSI
BOTTLING GROUP, INC.

11 DATED: November 5th, 2007

12 DONALD H. TUCKER, JR.
13 SMITH, ANDERSON, BLOUNT,
DORSETT, MITCHELL & JERNIGAN,
LLP

14 By:  _____

Donald H. Tucker, Jr.*

15 (*Pro Hac Vice application pending)
16 Attorneys for Defendant
PEPSI BOTTLING VENTURES LLC

17 DATED: November __, 2007

18 C. BROOKS CUTTER
19 KERSHAW, CUTTER & RATINOFF,
LLP

20 NICHOLAS J. DRAKULICH
21 JENNINGS & DRAKULICH, LLP

22 By: _____
23 C. Brooks Cutter
Attorneys for Plaintiffs

24 **ORDER**

25 Good Cause Appearing, IT IS SO ORDERED.

26
27 DATED: _____

28 The Honorable Frank C. Damrell, Jr.,
Judge, United States District Court

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12 LLP
13

14 By: _____

15 Donald H. Tucker, Jr.*
16 (*Pro Hac Vice application pending)
Attorneys for Defendant
PEPSI BOTTLING VENTURES LLC

17 DATED: November 5, 2007

18 C. BROOKS CUTTER
KERSHAW, CUTTER & RATINOFF,
19 LLP

20 NICHOLAS J. DRAKULICH
JENNINGS & DRAKULICH, LLP

21 By: _____

22 C. Brooks Cutter
23 Attorneys for Plaintiffs

24 **ORDER**

25 Good Cause Appearing, IT IS SO ORDERED.
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27 DATED: _____

28 The Honorable Frank C. Damrell, Jr.,
Judge, United States District Court

JOSHUA J. POLLACK, SBN 215922
PROSKAUER ROSE LLP
2049 Century Park East, 32nd Floor
Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193
E-mail: jpollack@proskauer.com

Attorneys for Defendants
PEPSICO, INC. and THE PEPSI
BOTTLING GROUP, INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AMANDA LITSCHKE, on behalf of
herself and all other similarly situated,

Plaintiff,

vs.

PEPSICO, INC., THE PEPSI BOTTLING
GROUP, INC., and PEPSI BOTTLING
VENTURES LLC,

Defendants.

Case No. 2:07-cv-02100 (FCD/JFM)

**STIPULATION AND ORDER
STAYING CASE PENDING
DECISION BY JUDICIAL
PANEL ON MULTIDISTRICT
LITIGATION**

IT IS HEREBY STIPULATED AND AGREED by and between Defendants

Pepsico, Inc., The Pepsi Bottling Group, Inc., and Pepsi Bottling Ventures LLC, and

the Plaintiff Amanda Litschke, on behalf of herself and all others similarly situated,

that all proceedings in this matter are stayed pending a determination by the Judicial

Panel on Multidistrict Litigation ("JPML") on the Motion To Consolidate and

///

///

///

1 Transfer filed October 2, 2007 by defendants PepsiCo, Inc. and The Pepsi Bottling
2 Group, Inc. with the JPML.
3

4
5 DATED: November 6, 2007

JOSHUA J. POLLACK
PROSKAUER ROSE LLP

6
7 By: /s/ Joshua J. Pollack, Esq.

8 Joshua J. Pollack
9 Attorneys for Defendants
10 PEPSICO, INC., and THE PEPSI
BOTTLING GROUP, INC.

11 DATED: November __, 2007

DONALD H. TUCKER, JR.
SMITH, ANDERSON, BLOUNT,
DORSETT, MITCHELL & JERNIGAN,
LLP

13
14 By: [See attached signature page]
15 Donald H. Tucker, Jr.*
16 (*Pro Hac Vice application pending)
Attorneys for Defendant
PEPSI BOTTLING VENTURES LLC

17 DATED: November __, 2007

C. BROOKS CUTTER
KERSHAW, CUTTER & RATINOFF,
LLP

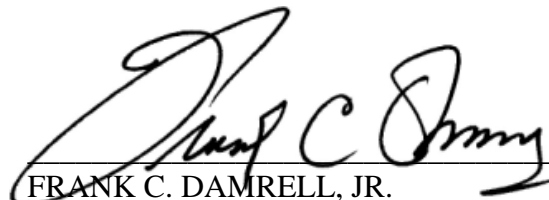
20 NICHOLAS J. DRAKULICH
JENNINGS & DRAKULICH, LLP

21 By: [See attached signature page]
22 C. Brooks Cutter
23 Attorneys for Plaintiffs

24 **ORDER**

25 IT IS SO ORDERED.

26 DATED: November 6, 2007

27
28 
FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
Southern District of New York
Office of the Clerk
500 Pearl Street
New York, N.Y. 10007
(212)805-0136

FILED

MAR 25 2008

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

J. Michael McMahon
Clerk

USDC ED OF CALIFORNIA

Date: 3/20/08

In Re: Pepsico

MDL 1903

Your Docket #

S.D. OF N.Y.

2:07-2100 FCD JFM

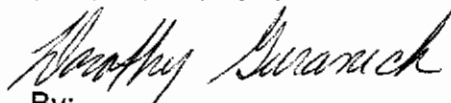
08 cv 2914

Dear Sir:

Enclosed is a certified copy of the order of the Judicial Panel on Multidistrict Litigation, transferring the above entitled action presently pending in your court, to the Southern District of New York and assigned to Judge BRIEANT for coordinated or consolidated pretrial processing pursuant to 28 USC 1407.

Please return the copy of this letter when transmitting YOUR FILE and a CERTIFIED COPY OF THE DOCKET SHEET.

Sincerely,
J. Michael McMahon


By:
MDL Unit
(212) 805-0646

UNITED STATES DISTRICT COURT
Southern District of New York
Office of the Clerk
500 Pearl Street
New York, N.Y. 10007
(212)805-0136

J. Michael McMahon
Clerk

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Sincerely,
J. Michael McMahon

By:
MDL Unit
(212) 805-0646

A CERTIFIED TRUE COPY

MAR 17 2008

ATTEST *[Signature]*
FOR THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**JUDGE BRIEANT**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

FEB 28 2008

FILED
CLERK'S OFFICEFILED
SD of NY
3/20/08**IN RE: PEPSICO, INC., BOTTLED WATER MARKETING
AND SALES PRACTICES LITIGATION**Amanda Litschke v. PepsiCo, Inc., et al.,
E.D. California, C.A. No. 2:07-2100**08 CV****2914**

MDL No. 1903

CONDITIONAL TRANSFER ORDER (CTO-1)

On February 14, 2008, the Panel transferred two civil actions to the United States District Court for the Southern District of New York for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. *See* ___ F.Supp.2d ___ (J.P.M.L. 2008). With the consent of that court, all such actions have been assigned to the Honorable Charles L. Brieant.

It appears that the action on this conditional transfer order involves questions of fact that are common to the actions previously transferred to the Southern District of New York and assigned to Judge Brieant.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), this action is transferred under 28 U.S.C. § 1407 to the Southern District of New York for the reasons stated in the order of February 14, 2008, and, with the consent of that court, assigned to the Honorable Charles L. Brieant.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the Southern District of New York. The transmittal of this order to said Clerk shall be stayed 15 days from the entry thereof. If any party files a notice of opposition with the Clerk of the Panel within this 15-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:

[Signature]
Jeffery M. Lüthi
Clerk of the Panel

Inasmuch as no objection is
pending at this time, the
stay is lifted.

MAR 17 2008

CLERK'S OFFICE
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**A CERTIFIED COPY**

J. MICHAEL McMAHON,

CLERKBY *[Signature]*

DEPUTY CLERK

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA**

**OFFICE OF THE CLERK
501 "I" Street
Sacramento, CA 95814**

USDC Southern District of New York
500 Pearl Street
New York, NY 10007

RE: AMANDA LITSCHKE vs. PEPSICO, INC.
USDC No.: 2:07-CV-02100-FCD-JFM

Dear Clerk,

Pursuant to the order transferring the above captioned case to your court, dated March 25, 2008 , transmitted herewith are the following documents.

Electronic Documents: 1 to 11.

Documents maintained electronically by the district court are accessible through PACER for the Eastern District of California at <https://ecf.caed.uscourts.gov>.

Please acknowledge receipt on the extra copy of this letter and return to the Clerk's Office.

Very truly yours,

March 31, 2008

/s/ **K. Yin**

Deputy Clerk

RECEIVED BY:

Please Print Name

DATE RECEIVED:

NEW CASE
NUMBER:

